

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

HOMELAND INSURANCE COMPANY OF
NEW YORK,

Plaintiff,

v.

CLINICAL PATHOLOGY
LABORATORIES, INC., AND SONIC
HEALTHCARE USA, INC.,

Defendants.

CIVIL ACTION NO. 1:20-CV-783-RP

**OPPOSED MOTION TO MODIFY THE SCHEDULING ORDER
TO ACHIEVE CONSISTENCY WITH LOCAL RULE CV-54**

Defendants Clinical Pathology Laboratories, Inc. and Sonic Healthcare USA, Inc. (collectively “Defendants”) file this opposed motion requesting modification of the Amended Agreed Scheduling Order [Dkt. No. 123] (the “Scheduling Order”), as follows:

1. To conserve resources and to achieve consistency with Federal Rule of Civil Procedure 54(d) and Local Court Rule CV-54(b)(1), Defendants respectfully move to modify the Scheduling Order so that Defendants may present any claim(s) for attorneys’ fees by motion after a judgment is rendered, with any adversary submission by Plaintiff Homeland Insurance Company of New York (“Plaintiff”), and without requiring either party to designate attorneys’ fees experts. The operative Scheduling Order provides for fact discovery to close on October 28, 2022, and for the designation of affirmativr experts by November 23, 2022, hence the filing of this request. Plaintiff is opposed to this motion, although it has not stated a reason for its opposition to a motion that would conserve resources, increase efficiency, and align the current Scheduling Order with the Federal Rules of Civil Procedure and the Local Rules.

2. The current Scheduling Order identifies the date by which testifying experts must be designated but does not separately address experts who may testify as to attorneys’ fees and

related expenses. Similarly, the Scheduling Order identifies the date by which all discovery must be completed, but does not separately address supporting documents that may be required by Federal Rule of Civil Procedure 54(d)(2) and Local Court Rule CV-54(b). *Id.*

3. Any discovery and/or expert designations regarding the reasonableness and necessity of Defendants' claimed attorneys' fees would be premature, unless and until the Court enters a judgment in favor of Defendants. Defendants therefore request that Defendant be permitted to present its claim for attorneys' fees by motion, with any adversary submission by Plaintiff, in accordance with Federal Rule of Civil Procedure 54, without requiring either party to designate attorneys' fees experts and disclosing supporting documentation prior to this Court's entry of judgment. The requested relief will allow the parties to avoid incurring costs that be unnecessary, and will also streamline issues for trial.

4. This Court has granted similar relief in other cases. *See* Order Granting Joint Mot. Modify Scheduling Order at 1, *Ryan Law Firm, LLC v. N.Y. Marine & Gen. Ins. Co.*, No. 1:19-CV-629-RP (W.D. Tex. Feb. 25, 2020) [Dkt. No. 27]; *see also* Local Rule CV-54(b)(1) ("Unless the substantive law requires a claim for attorneys' fees . . . be proved at trial as an element of damages to be determined by the jury, a claim for fees *shall* be made by motion . . . not later than 14 days *after entry of judgment* . . .") (emphasis added); FED. R. CIV. P. 54(d)(2)(b).

5. Defendants therefore respectfully request that the Court grant this Opposed Motion and modify the Court's Scheduling Order as requested above.

* * *

Dated: October 19, 2022

Respectfully submitted,

/s/ Ernest Martin, Jr.

Ernest Martin, Jr.
State Bar No. 13063300
Greg Van Houten*
HAYNES AND BOONE, LLP
2323 Victory Avenue, Suite 700
Dallas, TX 75219
214-651-5651 Direct
214-200-0519 Fax
ernest.martin@haynesboone.com
greg.vanhouten@haynesboone.com
*Admitted Pro Hac Vice

-and-

Mark T. Beaman
State Bar No. 01955700
Ryan Bueche
State Bar. No. 24064970
GERMER BEAMAN & BROWN PLLC
One Barton Skyway
1501 S Mopac Expy Suite A400
Austin, TX 78746
512-482-3504 Direct
512-472-0721 Fax
mbeaman@germer-austin.com
rbueche@germer-austin.com

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF CONFERENCE

I hereby certify that I emailed counsel for Plaintiff regarding the filing of this motion on October 16, 2022, October 17, 2022, and October 18, 2022. Plaintiff responded on October 18, 2022, stating: “We will oppose the bifurcation motion.” As of the date and time of this filing, Plaintiff has not articulated a basis for opposing the motion.

/s/ Greg Van Houten

Greg Van Houten

CERTIFICATE OF SERVICE

I hereby certify that, consistent with Local Court Rule CV-5, a true and correct copy of the foregoing was sent to all parties of record pursuant to the Electronic Filing Procedures and the Federal Rules of Civil Procedure on this 19th day of October 2022.

/s/ Ernest Martin, Jr.

Ernest Martin, Jr.